Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of		
	)	
E-Rate Broadband Notice of Proposed Rulemaking	)	CC Docket No. 02-6
Eligible Services List Further Notice of Proposed	)	GN Docket No. 09-51
Rulemaking	)	
E-Rate Draft Eligible Services List for Funding	)	
Year 2011	)	

Comments of the E-Rate Management Professionals Association, Inc.

The E-Rate Management Professionals Association, Inc. (E-mpa™) is a (501)(c)(6) trade association whose purpose is to promote excellence and ethics in E-rate professional management and consulting through certification, education and professional resources.

E-mpa™ serves as an advocate for the critical role served by E-rate management professionals and consultants. The organization strives to strengthen and support the E-rate program by acting as a self-governing body of E-rate management professionals and consultants. E-mpa™ provides assurance to stakeholders by maintaining the highest standards, developing and promoting best practices, and requiring ethical conduct for all members.

<u>**E-RATE BROADBAND NOTICE OF PROPOSED RULEMAKING**</u>

Released May 20, 2010

Comments Regarding Streamlining the Application Process

Technology Plans

Eliminate Technology Plan for P1 Applications.

The Commission proposes elimination of the technology plan for priority one applicants that otherwise are subject to state and local procurement requirements. While this idea is good in theory, we are hesitant to embrace this idea based on the following concerns:

- **The conditional statement: "that otherwise are subject to state and local technology planning requirements" could add a great deal of complexity and risk to applicants depending on how the policy is administered.** Would program reviewers be required to determine on a case by case basis if the applicant was indeed "subject to state and local technology planning requirements?." Without specific instructions from the Commission, E-Rate program reviewers would have to figure out what this condition means and how to approve or disapprove the condition. For example, would public school districts be presumed to be "subject to state and local technology planning requirements?" What tests would need to be met for non-traditional schools and libraries? Would the program administrator need to review all state and local technology planning requirements for each applicant to determine the adequacy and effectiveness of the technology planning process? Could funding be denied or previously disbursed funds recovered if the applicant thought they were exempt from the technology planning requirement, and then later learned they should have had a plan? We recommend that the Commission carefully consider the additional administrative burden of adding this conditional statement. In our opinion, if the decision is to eliminate the technology plan for priority one applicants, then the conditional statement should be removed.

- **Eliminate the requirement for all applicants or none**. To require the technology plan based on the size or type of applicant would make the program more complicated not easier.   Whatever decision is reached, the rules should be

consistent for all applicants. We can easily see instances of an applicant thinking they were exempt, but then finding out later that they should have had a plan which would then result in denial of their funding or worse recovery of disbursed funds. It only makes sense to eliminate the Technology Plan requirement if the Commission eliminates the requirement for all situations. Setting up some sort of a cap that then requires a Technology Plan such as $1,000,000 annually will adversely affect the medium and large school districts. For example, it would not be fair to require a technology plan for a school district with 50 schools who spends $20,000 per school year on Priority One services and not require a technology plan for a smaller district with 5 schools that spends $50,000 in Priority One services per school.

- **Third Party Technology plan approval should be presumed final approval with no further review or rebuttal.** We believe that the technology plan requirement in and of itself is positive for the E-Rate program. One of the complexities with the technology plan requirement arises with the approval process and subsequent recovery of disbursed funds for plans that were previously approved by an authorized technology plan approver. There is general agreement that every applicant should have a plan for technology and requests for E-rate funding should be for products and services needed to meet the goals and objectives of the plan. The question is whether or not the E-Rate program should review and police this area, what the role is of the technology plan approver, and whether or not the technology plan requirement is effective in meeting the intended purpose. In reality, there are a large number of applicants who prepare the plan solely to satisfy the federal requirements for funding. Once the technology plan is approved it is filed away and not looked at again until such time that it needs to be rewritten. On the other hand, there are many applicants who have a technology plan that is on-going and fully utilized as intended. Due to the wide variety of applicants, it makes the most sense to continue third party approval at the state and local level where authorized approvers have a better understanding of the unique issues for each applicant. Additionally, there should be protections for the applicant. There have been many audit findings where the applicant must return disbursed funds because, through no fault of their own, the plan approver made mistakes such as delaying approval of a plan or approving a plan that an auditor or other program reviewer determined was deficient. Most of the audit findings relating to technology plans dealt with ministerial violations that in no way impacted the effective utilization of

program funds. The rules should hold the applicant harmless as long as they submitted a plan and received authorized approval. To the extent the applicant fails to meet this requirement, recovery should not be warranted unless the failure to have an approved plan resulted in waste or abuse of program funds. We recommend that one of the best ways to simplify this particular area of the program is to presume that a technology plan that has been approved by an authorized technology plan approver is approved and no additional review is required.

- **Evidence of technology plan creation date prior to filing the Form 470**. Since technology plans do not have to be approved until the start of the funding year (July 1), applicants are automatically set up for failure of this requirement. Many of the states send notice to the schools that if their plan is up for renewal, they must have their technology plans submitted to the state by May 31 in order for the state to have time to approve the plan by July 1st. The problem with the May 31 due date from the state approver is that technically the plan should have been first prepared in September-December PRIOR to the filing of the Form 470. If you look at the reality of the situation, in almost all cases, the applicants do have a technology plan prior to the filing of the current year Form 470 because they all started with an initial plan in the first year of E-Rate funding (1999) or the first year that they filed for E-rate. A technology plan is a living document and the date the plan was initially created, therefore, was most likely in 1998 or earlier. The plan evolves each year and is formalized with an approval process in July of each year. Therefore, to deny funding for a district who didn't specifically make a new copy of their plan in the six months prior to filing their Form 470 for the current year doesn't make sense. It simply adds another layer of complexity to the program. The Commission could significantly simplify the technology plan requirement of the program simply by only requiring third party approval of a plan with no further review. In other words, if a plan is approved by an authorized technology plan approver, then no further review should be required. The approval letter should be the final "say so" that the applicant met this requirement.

- **Add Field to Form 470 for applicant to provide creation date of technology plan.** Absent elimination of the technology plan creation date requirement, E-mpa™, generally, supports the Commission's proposal to include the technology plan

creation date on the Form 470.   This would provide a means to remind the applicant of the requirement and serve as a safety net to ensure they would have prepared or updated their plan to reflect the products and services requested on the Form 470.

- **Retain the FCC technology plan requirement for all priority two services**. We agree with this recommendation.

Competitive Bidding Process

The Commission is seeking comments on the proposal to simplify the application process for priority one ("P1") services by eliminating the requirement that applicants for priority one services file an FCC Form 470 and wait 28 days before signing a contract with their selected service provider, as long as those applicants are subject to public procurement requirements.

The majority of our members oppose this change as we believe elimination of the Form 470 and related standardized competitive bidding process will have the unintended consequence of making the program significantly more complex. The standardized, Form 470 process required by E-Rate allows equal access to bidding information for all service providers.   It also provides minimum standards which have to be met in order to participate in the program.   Removal of the standardized requirements and the Form 470 will leave applicants and service providers without a formal process and therefore create a highly complex bidding process for all priority one applicants. Our concerns are listed as follows:

- **Hinder competitive bidding process**. One of the cornerstones of the E-Rate program is the fair and competitive bidding requirement. By eliminating this requirement from the program it could open up the door for schools to misinterpret the spirit of the program and think they do not have to bid their services and can go with whomever they want. The form 470 is a fairly simple straight-forward form and its elimination would not significantly make the program any easier or less complicated for the applicant. Loss of the Form 470 for P1 services could seriously hinder the competitive bidding process. Since the Form 470 is equally available to all service providers, it establishes a "level playing field" that provides equal access to bidding

information to all service providers. Even though applicants frequently do have local and state procurement rules to follow, they do not have access to or the local funds needed to develop a uniform, nation-wide program to advertise their bids. Many service providers faithfully watch Form 470 postings and then contact the applicant advising them that they would like to bid on a particular product or service. We believe that by eliminating the filing of a Form 470 for P1 services, it will substantially reduce the number of potential bidders on P1 projects and significantly increase the costs of P1 services. It is not uncommon for applicants to receive multiple bids for P1 services and in many cases applicants receive more than 10 responses to P2 requests for proposal, which indicates the Form 470 is an effective means to promote competition and ultimately drive down prices. If there is no requirement that a Form 470 be posted for a P1 service, we believe it will substantially reduce the amount of bids received for the products and services and increase the cost of the P1 service(s). E-mpa™ also believes this would have the unintended consequence of significantly increasing the likelihood of waste, fraud and abuse.

- **Additional Complexity for E-Rate program Reviewers**. The current process is standard procedure for everyone. If a non-standard process is implemented then every state, city and school process would likely be verified during the application review conducted by program integrity assurance ("PIA") which would add untold hours of time for both the reviewers and the applicants. PIA reviewers, selective reviewers and auditors would be required to know all state and local procurement laws and would be tasked with policing these laws which are outside the scope of the E-Rate program. Each time a state or local agency changes their procurement requirements, PIA would have to be notified. Additionally, this would be duplicative effort since the applicant's state and local procurement requirements are already audited by state and local officials. The Form 470 is not a complicated form. Eliminating the form does not significantly shorten the application process. However, managing a change as to who must file a 470 and who is exempt is fraught with problems and delays in the application approval process. If schools and libraries are not required to post a 470 this would likely compel the Administrator to test compliance with state and local procurement requirements. It is unrealistic for the Administrator to hire a sufficient number of attorneys to efficiently review state and local procurement requirements which change on a regular basis. Would PIA

P a g e | **6**   Comments – FCC E-Rate Broadband NPRM - July 8, 2010
E-Rate Management Professionals Association
www.e-mpa.org

reviewers then be charged with learning and interpreting all existing and new state and local procurement requirements? This would lead to longer review times and could lead to different interpretations of the laws. Not to mention a school not knowing if they have to file a 470 or not. The school could have the spirit of the program in mind and think that they do not have to file a 470 but PIA could review it and say that they do. Now the school loses funding for an entire year even though they thought they were doing things correctly. PIA would expand exponentially if every applicant had to validate not only their own procurement rules but also the state rules. This could add at least 2-3 weeks of PIA questions and responses traded between reviewers plus the PIA reviewers would then have to use a 3rd party validation that the applicant was indeed providing the accurate information. New and complex application review procedures would most likely need to be developed to ensure local and state procurement policies are followed and if such policies provide for a fair and competitive bidding process with a sufficient evaluation of E-rate eligible products and services whereby the most cost effective solution is selected with the primary factor being price of the E-Rate eligible products and services. Reviewers may need to establish thresholds for when more robust procurement procedures may be necessary such as RFPs with public notice. The applicants already have a burdensome program to deal with and this would only add more to an overfull plate of rules and regulations to deal with.

- **If the Requirement for Form 470 for Priority One services is eliminated, then the Commission must also eliminate Competitive Bidding Requirements for Priority One Services.** The only way the recommendation to remove the Form 470 and standardized competitive bidding process would be successful in streamlining the process would be if all requirements for the competitive bidding and procurement processes were also eliminated for Priority One services. As detailed above, the Form 470 provides a standardized bidding process for all participants to use. If the Form 470 is eliminated for P1 services, then the competitive bidding requirement would also have to be eliminated. In other words, the program would have to remove all requirements related to posting RFPs, contracts, bidding period, and selection of the most cost effective solution. There would have to be a presumption that the applicant's own state and local procurement requirements are sufficient. There would be no denial or reduction of funding for P1 services due to non-compliance related to competitive bidding and procurement processes.

- **Clarify Applicant Requirements when conflict with state and local procurement rules.** The Commission needs to provide clear guidance on how to handle situations when the applicant's state and local procurement rules are in direct conflict with E-rate rules. For example, a state law may require a school district to post their bids for 14 days and notify vendors of their selection within 21 days. Since the E-rate program requires 28 days before a contract is signed, how does the applicant abide with state law (21 days) and E-Rate rules (28 days)? Another example of a direct conflict would be if state law requires an evaluation of bids that provides for total price (eligible and ineligible items) as the primary factor. E-Rate rules require that price of E-rate eligible services (ineligible items must be removed) as the primary factor. What steps should the applicant take in order to comply with both state statute and E-Rate rules?

- **Clarify 28 day rule.** The current 28 day requirement states that the applicant cannot sign a contract with the provider until the 29th day after the posting of the Form 470. This does not address how long the bidding window must be open. For example, an applicant could post a Form 470 and accept bids after 14 days. They could then evaluate bids, make their selections and sign a contract on the 29th day. E-rate program reviewers have interpreted the 28 day rule as applying to both the bidding period and when a contract has been signed. We recommend that the Commission clarify this to make it easier for applicants to comply with the program rules.

- **Fair and Open Competitive Bidding Rule.**

It appears the Commission has directed The Administrator ("USAC"-Universal Services Administrative Company) to interpret program rules to include both what is included in Part 54 of the Code of Federal Regulations (C.F.R.) and clarifications made in appeal decisions. For example, the Ysleta Order has led to a myriad of additional requirements that are not included in the C.F.R. While, we do not specifically object to requirements laid out in the Ysleta Order, we believe the Administrative Procedures Act requires certain procedures be followed in order to change program rules.

Codification of Competitive Bidding Rule. The Commission proposes to codify the requirement that an applicant must conduct a fair and open bidding process when seeking bids for services eligible for E-rate support. The Commission also proposes to provide illustrative guidance of the types of conduct that would satisfy or violate the rule. We agree that the codification of existing requirements should not increase the burden on E-rate applicants. As stated earlier, however, if the Form 470 requirement is removed for Priority One ("P1") services, and P1 services must be reviewed for compliance with competitive bidding requirements without the standardized process provided by the Form 470 filing, we believe the added burden on applicants and the administration of the program will be complicated exponentially.

Illustrative Guidance on types of conduct. Although appeal decisions have brought forth a wide range of unacceptable behavior, we believe providing a list would NOT be a good idea as it would greatly increase the complexity of the program and add an additional administrative burden on all applicants, service providers, and program reviewers. Once the Commission provides a sample list, then program reviewers will have to verify each item listed. If the Commission omits an inappropriate behavior, there is a high potential that the inappropriate behavior could continue without penalty since it was not specifically listed. Since it is extremely difficult to anticipate all scenarios, we recommend codification of the existing requirement and continue to use individual cases decided through appeal decisions to provide for the correct interpretation and application of the rules.

An alternative solution would be for the Commission to list only the worst inappropriate behaviors along with a framework for other prohibited behaviors which would allow for case by case review and avoid the confusion of omitted inappropriate behaviors from a list.

Application Process Streamlining

- **Online Data Entry for all Forms**

We fully support the proposals for an improved online system that provides applicants with the tools and access to data necessary to participate more effectively and efficiently in the program. We agree USAC should move to have everything on-line, but they need to solicit input from the user community regarding the features and function of the USAC tools. For

example, Form 471 Block 5 entry could be improved by pre-filling the most recent SPIN and Form 470 number on the subsequent Block 5 entry. The contact person is most likely the person authorizing the application so adding a check box to copy the contact data from Block 1 to the authorized person in block 6 would expedite data entry.

In order to require all applicants to file on-line, the Administrator will need to invest significant funding into its information systems. Even though 99% of applications are filed on-line, the lack of robust features and functionality incents some large applicants to file on paper. Automation of the Item 21 attachments, for example, is effective for clear-cut services but complex and lengthy descriptions or lists of materials may be too difficult to fully automate without significant loss of program effectiveness. Before requiring all applicants to file online, the Commission will need to work with the stakeholder community to determine why the Forms are not being filed online. Rather than forcing all applicants to file online, another method would be to allow applicants to submit or upload data files containing the required form information. Given that this functionality is currently provided to large service providers it is reasonable for the program Administrator to provide similar functionality to the applicant community. This solution would be more cost effective than requiring the program Administrator to develop more robust online filing tools.

- **Addition of Consultant Information to Forms 470 and 471:**

E-mpa™ supports a consultant registration process and recognition of qualified consultants by the Commission and we applaud its intent. However, we have several concerns related to the mechanics of proposed changes to Forms 470 and 471 to include data fields to enter the name and contact information of the consultant who assisted with completion of the form.

We believe the Commission should carefully consider the following concerns:

As stated in the Ex-Parte filing submitted by E-mpa™ on May 29, 2009 "The Role of Consultants In the Universal Service Program for School and Libraries", E-Rate consultants provide a wide variety of program-related services to their schools, library, and service provider clients. Overall, the types of services that they provide fall into several different categories, with the exact scope and nature of the work depending on the specific type of engagement.

The following is a good example of the kinds of categories into which E-Rate consulting services generally fall:

Sample Areas of E-rate Consulting Services

- E-Rate education and training
- Recordkeeping assistance
- Establishment and implementation of E-Rate policies and internal controls
- Compliance software services
- Compliance consulting for service providers
- CIPA compliance consulting
- E-Rate-related technology plan compliance consulting
- Eligible services consulting
- Form 470 preparation
- Discount rate-related data collection
- Form 471 preparation
- Post Form 471 administrative consulting
    - Receipt Acknowledgement Letter (RAL) review
    - Form 471 correction and modification requests
- PIA and Selective Review response preparation
- Funding Commitment Decision Letter (FCDL) review and Appeal preparation
- Post commitment administrative form preparation:
    - Forms 486 and 500
    - Service substitution and service provider (SPIN) change requests
    - Invoice deadline extension requests
    - Contact change notifications
- Service certification and Service Provider Invoice (SPI) review
- Assistance with Service Provider collections and invoice reconciliations
- Reimbursement (BEAR) form preparation
- Audit assistance

Throughout the application process, applicants may work with a variety of "consultants" from technical consultants, procurement consultants, state e-rate coordinators, education service center e-rate consultants, and e-rate consultants who may provide consulting services for just one area of the process such as development of the technology plan and RFP, or only the Form 471 filing. Some consultants work only with service providers and others assist applicants only with the reimbursement process. Some consultants do assist applicants with the entire process which is the only type of consultant that we presume would "fit" the registration idea suggested by the revisions on the Form 470 and Form 471.

The proposed changes to include data fields to enter the name and contact information of the consultant who assisted with the completion of the form could, without careful consideration by the Commission, unintentionally complicate the application process instead of streamlining and/or simplifying it.

Our organization struggled with this exact issue as we were developing the mission and vision for the E-Rate Management Professionals Organization. We discussed the "pros and cons" of the Commission including a registration process for certified E-rate professionals and recognition of those consultants who have agreed to abide by a code of ethics, pass a proficiency exam, and meet experience requirements for certification. As the E-Rate management profession has grown over the years, we believe it is time for a certification process and will begin certification of our qualified members in 2010-11.

In the same way other professions such as engineering, accounting, and architecture have developed a certification process to self-regulate the consultants in their industry, the E-Rate Management Professionals Association is taking steps to begin certification of qualified members.

> As stated in its bylaws, the mission of the E-Rate Management Professionals Association, Inc. (EMPA) is to promote excellence and ethics in E-Rate professional management and consulting through certification, education and professional resources.
>
> EMPA provides online resources to its diverse and experienced membership along with a forum for discussion and development of best practices in the management of the Universal Services Discount Mechanism for Schools and Libraries (E-Rate). The organization provides a collective voice for discussing issues relevant to its members and proposed program changes to the E-Rate program. The talent and experience of the organization's network of consultants provides a superior resource to help members increase value to their clients, enhance effectiveness of client organizations, and generally aid the advancement of its members and other organizations having related objectives. EMPA will also provide certification for E-Rate management professionals and consultants that affirms quality standards of technical competence and professional conduct.

We would like the Commission to consider recognition of the Certified E-Rate Management Professional and consider ways in which this certification may benefit the program.

Discount Matrix Streamlining

Discount Calculation using Average Discount Rate.

This recommendation sounds good in theory but in practice could potentially complicate the application filing process.

Removes Incentive to Install priority two services for low income areas. In urban areas, large districts with multiple entities will have some entities located in low income areas and some in high income areas. The current discount calculation – by site – provides incentives for the urban district to install priority two services at their low income sites first (80 - 90% sites). If an average rate is used, there would be no incentive for the large urban district to install priority two services in the low income areas first.

Reason for simplification in this area is not as critical as other areas. The administrative burden of entering all sites in Block 4 of the Form 471 has been greatly decreased with the bulk upload tool and the ability to copy Block 4 from a prior year application to the current year application. As mentioned earlier, the Commission could simplify the application process related to the discount calculation by limiting review of state-verified data to only those instances in which there is a discrepancy between state reported and applicant-reported data. This does not mean that the state data would take precedence over the applicant's self-validated numbers. The intent would be that the state data would not need to be verified if the applicant's data is in agreement. The applicant should be able to continue to self-validate their enrollment and low income data. We believe that after careful consideration of the discount average concept, the simplification achieved by using the average discount rate would not outweigh the complexities added for larger districts nor the loss of the incentive to provider priority two services for low income areas served by a large district. Additionally, this policy change, without being coupled with drastic changes to the discount matrix, would result in fewer applicants receiving Priority 2 funding because there will be a concentration of of Priority 2 requests in one discount band which the Administrator would likely never be able to fund.

Comments Regarding Providing Greater Flexibility to Select Broadband Services

Wireless Services Outside of School

We have the following concerns regarding the proposal to provide for full E-rate support for wireless Internet access service used with a portable learning device that are used off premises.

- Auditing a program that extends access to students in the home or employees working outside the school or library would be an extremely burdensome task for all parties involved with a wide open door for fraudulent activity. Even with the advanced technology we have today, it would be very difficult to determine if the wireless resources were being used for educational purposes as intended by the program. This proposal has a high risk of waste, fraud, and abuse.

- This proposal is a good idea, but other needs in the program should be addressed first. With finite funding in the E-rate program, this would take additional funds from other areas that are not currently being met especially in the area of priority two funding.

- E-mpa™ would like to suggest that if the National Broadband Plan mandates the rollout of this type of technology, the Commission seriously consider funding it through a different Universal Service Fund such as High Cost or some fund that will be established from a reallocation/reauthorization of the High Cost fund (perhaps "Connect America").

Lease of Fiber from any provider

The majority of our members support the Commission's recommendation to remove requirement that lit fiber must be leased from an eligible telecom provider, and proposes to permit the leasing of fiber where the provider does not provide the modulating electronics, as long as the applicant lights the fiber immediately.

Expanding Access for Residential Schools that Serve Unique Populations

We have the following concerns regarding the proposal to provide expanded access for residential schools that serve unique populations.

- We agree this is a reasonable proposal but the Commission will need to be very specific in defining what special circumstances must be in place to provide for funding the residential areas of schools.

- Funding should not be based on the length of time services are provided. If Educational Services are provided the funding should be allowed.

- An example on carefully restricting this funding to meet the intent of the program would be to only provide E-rate funding to state-funded entities such as a state funded school for the deaf and disallow E-rate funds for residential areas of private institutions such as private boarding schools.

- There is a significant difference between funding a residential facility whose students cannot leave (i.e., a school for disabled students which uses E-Rate funding to provide internet and telecom services to their students who cannot leave their beds or cannot leave their room because of their disability) and funding a residential facility whose students choose not to leave. The Commission would need to clearly define "Unique Populations."

Targeting Support for Broadband Services

The Commission seeks comment on whether certain services, such as dial-up Internet access and voice telephone services, should continue to be funded and instead target additional funding toward higher bandwidth services.

- **We recommend no change in priority funding from basic services to advanced services.** The shift from more basic services, such as basic phone service and dial-up internet access, is naturally occurring in the market place. However, for a myriad of reasons such as high transition costs and lack of access in rural areas, the shift to more

advanced services will take time. There should and will come a time when the E-Rate program will no longer fund these services, but a change at this point would likely do more to hurt applicants than help them. If a school with basic phone service is given a reduced discount or no discount at all for these services, it will likely take it longer to transition to the advanced services because of the high transition costs and higher costs to maintain its current level of connectivity. While we agree that the Commission should implement policy decisions to promote access to advanced services in rural communities, the network build-outs will take time. The Commission should not further disadvantage rural communities with limited access, by reducing or eliminating E-Rate funding for their current access. While the Administrator does not have or does not publish data on dollars spent for various services, it is our strong belief that dollars requested or these services are decreasing each year and applicants using these services are doing so for legitimate reasons.

Comments Regarding Expanding the Reach of Broadband to the Classroom

Predictable Internal Connections Funding for More Schools & Libraries

<u>*Per Student Cap*</u>

The Commission Proposes to set aside a certain amount of the $2.25 billion cap that would specifically be dedicated to internal connections, even if it means not funding all Priority 1 requests.

We recommend not implementing a cap as described by the Commission. Such a cap has the potential to have the opposite effect by large schools requesting the cap whether they need it or not while small schools, which make up the majority of the applicants, would receive such a small amount that the funding would not be effectively utilized.

For example, a small 300 student school, under the proposed $15 a student cap would receive 300*$15= $4,500.00. If the school is an 80% school, it would actually receive $3,600.00 in funding. With this low amount of funding, it would likely only be able to afford a fraction of the infrastructure it needs. For example, they might afford one $4,500.00 server, but not the required wiring. Or they could run some wiring but will not be able to buy more than one server. This limited funding would hinder the school's ability to meet its

needs, and would force the school to fund their projects in stages over multiple years, thereby delaying the actual benefit from the program.

Additionally, this policy would disadvantage poorer schools because the internal connections cap would not meet its technological needs, thus reducing the schools effective discount rate, which would likely result in a decision to not move forward with a project. Finally, a cap will likely result in an increase in the potential for waste or abuse of funds, as applicants will be incented to request Priority 2 funding whether they need it or not.

Set Aside for Internal Connections

The Commission's recommendation for setting aside a portion of the E-rate funding cap to be used only for Priority Two ("P2") services would allow for P2 funding regardless of P1 so would fund earlier and would guarantee funding in this level. However, with the higher and higher demand for increased bandwidth circuits to meet educational needs, such a set-aside, without additional funding, might have the exact opposite effect by denial of funding for priority one services to an applicant who has all the equipment they need, but cannot afford the monthly, recurring cost of their Internet Access and wide area network without E-Rate funding.

The priority funding structure originally set in place for the E-rate program recognized that the first priority of the program was to fund Internet Access and Telecommunications services and if funding was still available to provide funding for Internal Connections. As long as the program is confined to a finite amount of funding, we do not recommend setting aside funding for Priority Two services which in turn would reduce the funding available for Priority One Services. We believe that without additional funding the concept of setting aside a portion strictly for P2 would be a step back, not a step forward.

Threshold for Priority Two Funding

In response to the Commission's request for comment on the appropriate threshold for any revised methodology for internal connections funding, we have the following comments.

Reduce Maximum Discount for Priority Two Services. We recommend that the Commission consider reducing the maximum discount rate for Priority two services to 80% or even as low as 70%. This proposal was originally recommended by the Waste Fraud and Abuse panel several years ago. If the applicant has to invest a greater share of the cost and therefore require more investment of local dollars, then the applicant will have more incentive to seriously consider whether they really need products and services and ensure they are implementing the most cost effective solution which in turn will reduce waste, fraud and abuse.

The "flip side" of reducing the maximum discount rate, however, is the risk that extremely low income districts will not be able to pay the additional 10%-20% and therefore will not be able to afford to install the needed products and services with the higher non-discount portion. Due to the finite amount of funds and the fact that only the extremely low income districts have historically had access to priority two funding, we don't see that this latter concern is a viable issue and therefore support the reduction of the maximum discount for priority two services.

Realistically a change to the Priority 2 discount level will do little to help fund more internal connections. Over the next several years, it is likely that requests for Priority 1 services will exceed the $2.25 billion funding cap resulting in no monies available for Priority 2. Unless the Commission reduces "what" it funds or "how much" it funds for Priority 1 services, there will not be monies available for Priority 2 services without a significant increase in the annual funding cap.

Revised Discount Matrix

We recommend that the Commission only make one change to the discount matrix at a time and evaluate the result before making additional changes. We are recommending reducing the maximum discount rate for priority two services to 80% and possibly as low as 70%. It is our opinion that this one change could make a significant difference in funding and therefore we do not believe it would be prudent to make additional changes until the Commission has a chance to properly evaluate the effect on the program of the change in the maximum discount rate.

Eliminate the 2 in 5 Rule

The Commission proposes to eliminate the two-in-five rule, and require schools to submit applications for internal connections by school district, not by individual school. Schools that operate independently from a school district, however, such as private schools and some charter schools, should still apply for discounts individually.

The Two-in-Five rule adds significant layers of complexity to preparing and submitting applications. The primary reason is that priority two funding occurs late into the next funding year or, in many cases, long after the next year's applications are submitted.

Example: In December, 2009, applicants who had filed for priority two funding for FY 2008 had not yet received their funding letters for FY 2008 nor for FY 2009. When the FCC announced the carryover of $900 million in unused funds to FY 2009, PIA reviewers were notified to review FY 2009 priority two requests down to the 80% discount level. At the same time, the applicants were filing their FY 2010 E-rate Forms 470 and preparing to request priority two funding for FY 2010. These applicants were asked by PIA reviewers to cancel their FY 2008 funding so they would not be 2 in 5 limited and would therefore be eligible for FY 2009 funding. This was extremely confusing to the applicants who were making decisions regarding 2 in 5 rule not only between FY 2008 and FY 2009, but also how that would impact 2010 possible funding. This created significant confusion for the applicants and quite likely they made some quick decisions they may have regretted later. All of this was also very time consuming for the program reviewers.

Due to the unpredictability of priority two funding and the new 2 in 5 rule, we have seen quite a few districts simply ask for three years of funding in one year, then keep applying each year until they finally get funded. This does have the intended result of the 2 in 5 rule in that the school district receives funding in 2 out of every 5 years, however we have not seen it have the effect that the Commission originally expected of the lower income districts at the higher discount levels taking less of the funding and thus increasing the availability of priority two funding to more eligible schools and libraries on a regular basis. For example, a district will request enough funding to meet their technology needs over the three year period so instead of using $10,000 each year they are using $30,000 in one year and $0 in years 2 and 3, so the total amount of funds used by the low income district is the same. The $30,000 request is most likely reasonable and in line with their technology needs. So

instead of installing equipment over the three year period, they just do it all in one year and use maintenance funding for years 2 and 3.

We recommend that the 2-in-5 rule be removed but that the Commission retain the current method of filing applications either by district or by site.

Application by School District

Requiring all applicants that are school districts, to apply as a district would have the same effect as discussed in the *Discount Matrix Streamlining* section earlier in this response.

> *Requiring all school districts to apply as a district removes the incentive to install priority two services for low income areas. In urban areas, large districts with multiple entities will have some entities located in low income areas and some in high income areas. The current discount calculation – by site – provides incentives for the urban district to install priority two services at their low income sites first (80 - 90% sites) . IF an average rate is used, there would be no incentive for the large urban district to install priority two services in the low income areas first.*

We do not recommend requiring applicants to apply by school district and recommend that they continue to be given the option of filing either by district or by individual site.

Indexing the Annual Cap to Inflation

The Commission proposes to index the E-rate program funding cap to the rate of inflation, on a prospective basis, so that the program maintains its current purchasing power in 2010 dollars. In order to maintain predictability, however, the Commission proposes that during periods of deflation, the funding cap will remain at the level from the previous funding year. The proposal would NOT adjust the current cap to adjust for inflation since the program began in 1998.

We have the following comments regarding the funding cap:

The Annual Cap of $2.25 billion is significantly below what is required to meet the current demand. Information Technology has had exponential growth since 1998 when the program was implemented. To expect the program to still meet the original goals of the program

P a g e | **20**   Comments – FCC E-Rate Broadband NPRM - July 8, 2010
E-Rate Management Professionals Association
www.e-mpa.org

using 1998 dollars is unrealistic. Technology in some areas has become less expensive, but in most cases, costs have increased due to the complex solutions necessary to implement advanced, broadband technologies. A primary example of this is that the FCC has established a goal to move more and more applicants to use Voice over IP technologies rather than continue to use primarily "basic" telephone services. This is a great concept and one we support. However, goals such as these come with a price. For example, as more and more applicants have the opportunity to implement VOIP, they will first have to upgrade their internal networks and will need E-rate funds to purchase the needed internal connections.

The Commission has already recognized that there is not enough funding to support the E-rate program's current demand and the changes in this document are designed to re-distribute some of the funding. This does not mean that in 2010 $2.25 billion is sufficient. As the demand has continued to grow and has stayed consistently in the $4 billion range, we encourage the Commission to review the allocation of all Universal Services funds and increase the funding cap for the Schools and Libraries program whenever possible. Finally, we recommend the Commission look to establishing a contribution factor that accounts for all manner of service providers who participate in the E-rate program.

A. Comments Regarding a Process for Disposal of Obsolete Equipment
We recommend adopting the recommendations as proposed by the Commission.

E-RATE ELIGIBLE SERVICES NOTICE OF PROPOSED RULEMAKING
Released December 2, 2009

Eligible Services Comments

Provide for funding Anti-Virus, Anti-Spam and Filtering Software
Along the same line of reasoning for providing E-Rate funding for firewalls, we also support eligibility for E-rate funding for Anti Virus, Anti-Spam and filtering software as these are critical to protecting data as it is transmitted to the classroom or library.

Cell phone applications.

We support the Commission's recommendation to cost allocate separately priced applications for cell phones. However, if the cost of the allocation is not separately priced, it needs to be considered ancillary use. For example, if GPS functionality is priced separately, the separate cost of GPS functionality would be removed as ineligible but if the GPS functionality is a standard with the phone such as the GPS capability of the iPhone, then it would not be necessary to determine a price of the GPS functionality and have it cost allocated.

Clarify "Unbundled Warranties."

The Commission stated that "we find that unbundled warranties are not services eligible for E-rate discounts as basic maintenance of internal connections." The Commission further explained, "we do not add unbundled warranties ot the ESL at this time because we find that warranty may be duplicative of an applicant's maintenance agreement or contract."
The explanation of exactly what constitutes an "unbundled warranty" is extremely confusing and needs to be clarified. There has been much discussion, contemplation and interpretation of exactly what the Commission is trying to say regarding "unbundled warranties."

We heard one interpretation that an unbundled warranty is a manufacturer's warranty for a piece of equipment that was not bundled with the sale of the equipment. If you have a break/fix agreement with your service provider for a piece of equipment and you also have a manufacturer's warranty that was purchased to enable you to replace equipment that breaks for whatever reason, then the manufacturer's warranty would be a duplicate cost and not eligible. However, if you have a break/fix manufacturer's warranty and a maintenance agreement only for configuration and software updates for the equipment, then the manufacturer's warranty is not duplicative and would be considered eligible.

We need the Commission to clarify what is meant by "Unbundled Warranties" and provide examples of when a manufacturer's warranty is eligible and when it is considered an "unbundled warranty and therefore not eligible.

Conclusion:

We appreciate the time and consideration dedicated by the Commission to these issues and welcome additional improvements to the program which will continue this critical program for schools and libraries across the nation and the students and library patrons they serve.

Submitted by:

Deborah J. Sovereign

Secretary/Treasurer

E-Rate Management Professionals Association, Inc.
1101 Stadium Drive, Ada, OK 74820
866-334-1444
July 8, 2010

P a g e | **23**   Comments – FCC E-Rate Broadband NPRM - July 8, 2010
E-Rate Management Professionals Association
www.e-mpa.org